

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: U S WEST COMMUNICATIONS, INC.	DOCKET NO. TF-99-109
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**ORDER REJECTING PROPOSED TARIFF PAGES AND REQUIRING RE-FILING
OF OTHER PROPOSED TARIFF PAGES**

(Issued August 27, 1999)

On April 12, 1999, U S WEST Communications, Inc. (U S West), filed a proposed tariff revision, identified as TF-99-109, to remove message telecommunications service (MTS), operator services (OS), and directory assistance (DA) from its access and local service tariffs. Similar services were deregulated by the Board in Deregulation Of Competitive IntraLATA Interexchange Services; InterLATA And IntraLATA ISDN, Operator Services, And Directory Assistance Services; And Voice Messaging Service, Docket No. INU-95-3, when the Board found the services to be subject to effective competition, pursuant to IOWA CODE § 476.D (1995). U S West proposes to remove these services from its tariff in the belief that they should be deregulated as a result of the Board's action in Docket No. INU-95-3.

Some of the services U S West proposes to remove from its tariff are nonbasic communications services pursuant to U S West's price regulation plan. Pursuant to that plan, the revised tariff pages would have become effective 15 days

after filing unless suspended or rejected by the Board. However, on April 23, 1999, the Board issued an order suspending parts of the tariff and allowing other parts to go into effect. The proposed removal of the MTS portions of the tariff was permitted to take effect on April 27, 1999. The Board suspended removal of the OS and DA portions to give U S West and any other interested persons an opportunity to brief the following three issues:

1. Does IOWA CODE § 476.6(1)-(4) (1999) prevent the Board from deregulating U S West's DA service? Is the answer different for DA provided using 411 rather than 1-xxx-555-1212?
2. Is directory assistance reached by dialing 411 subject to dialing parity requirements? Did the Board already rule on deregulation of DA in Docket No. INU-95-3? If the answer to either of these questions is "no," should DA reached by dialing 411 be deregulated?
3. What is the basis for removing local OS from the U S West tariff?

U S West and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) subsequently filed briefs addressing the questions asked by the Board. Their arguments are summarized below.

1. Issue: Do IOWA CODE paragraphs 476.6(1)-(4) prevent the Board from deregulating U S West's DA service? Is the answer different for DA provided using 411 rather than 1-xxx-555-1212?

The referenced statutes require, among other things, that rate-regulated telephone utilities (such as U S West) provide free DA to legally-blind customers, provide detailed DA billing records, and give seven free DA calls per month per customer for the first 12 months of a new DA tariff.

U S West takes the position that the provisions of IOWA CODE § 476.6 do not prevent the Board from deregulating DA service. (Consistent with § 476.6(1), even if the service is deregulated, U S West states it will not impose a charge for DA service on customers who are legally blind.) U S West argues that the dialing pattern used to reach DA is irrelevant. The service can be reached through a variety of dialing patterns, depending upon the telephone instrument used, and is, according to U S West, highly competitive in all relevant situations.

Consumer Advocate agrees that the cited statutes do not prevent the Board from deregulating DA service, regardless of the dialing pattern used. Consumer Advocate argues the requirements of IOWA CODE § 476.6 apply to DA only so long as it is subject to rate regulation.

2. Issue: Is directory assistance reached by dialing 411 subject to dialing parity requirements? Did the Board already rule on deregulation of DA in Docket No. INU-95-3? If the answer to either of these questions is "no," should DA reached by dialing 411 be deregulated?

U S West argues that DA reached by dialing 411 is not subject to dialing parity requirements. Instead, it is the customer's "choice of a local exchange provider that determines how a 411 call will be routed—not the choice of an intraLATA or interLATA long distance carrier." Thus, dialing parity does not apply.

U S West also argues that in Docket No. INU-95-3, the Board continued regulation of Category 1 services (intraLATA services provided on a non-equal access basis) because they were not subject to effective competition and deregulated Category 2 services (the same intraLATA services provided on an

equal access basis) because effective competition exists for those services. Now there are no services being provided on a non-equal access basis, so in U S West's view there should be no Category 1 services. Instead, all of the services would be Category 2 services and subject to effective competition. U S West submits that the record that supported deregulation of Category 2 services in 1996 should now apply to the former Category 1 services, as well. In fact, according to U S West the market has become even more competitive with new internet-based services and the availability of 00 calls to the customer's preferred interexchange carrier (PIC).

Consumer Advocate argues that the Board's order in Docket No. INU-95-3 did not specifically address DA that is reached by dialing 411. Consumer Advocate believes the Board did not intend to make a finding that competition exists for 411 calls without discussing any underlying facts to support such a finding. Consumer Advocate believes the differences between a 411 dialing pattern and 1-xxx-555-1212 are significant and suggest that 411 DA is not comparable to the other deregulated DA services. For this reason, DA reached by dialing 411 should not be deregulated without first conducting a separate investigation to determine whether there is effective competition for the service.

U S West replies that a caller can get any number in the United States by dialing 411; they can get the same information by dialing 00. Moreover, payphones and businesses using a PBX can route 411 calls to a DA provider other than U S

West. As far as dialing convenience is concerned, there is no significant difference between 411 calls and 00 calls; the dialing pattern is not controlling as to whether the service is competitive.

3. Issue: What is the basis for removing local OS from the U S West tariff?

U S West argues that many firms provide OS in Iowa with no meaningful distinction between local and non-local operator calls. In fact, according to U S West the overwhelming preponderance of calls handled by operators involve long distance calls, a service that has been deregulated in Iowa.

Consumer Advocate responds that local OS refers to local operator assistance used to complete local calls. The Board's order in Docket No. INU-95-3 does not specifically address deregulation of local OS. It addresses only intraLATA services, a form of interexchange calling. In the absence of an explicit finding by the Board that local OS is subject to competition, it cannot be deregulated.

U S West replies that in the Board's order in Docket No. INU-95-3, the Board only distinguished among intraLATA service with equal access, intraLATA service without equal access, and interLATA service. It did not have a fourth category for local calling and it is too late to make that distinction now. In fact, interexchange carriers are already able to provide local OS services, if the customer dials 00 to reach the PIC operator. U S West believes it should be permitted to offer local OS on the same basis.

Moreover, U S West states that about 79 percent of U S West's local OS calls are placed from payphones, a competitive market segment.

ANALYSIS

The parties agree that the Board has the authority to deregulate local DA services without running afoul of the provisions of IOWA CODE § 476.6. The requirements of the statute only apply to services that are subject to the Board's rate regulation. Once a service is deregulated pursuant to IOWA CODE § 476.1D, it is no longer subject to rate regulation and the requirements of § 476.6 do not apply. The Board concludes that § 476.6 does not prevent the Board from deregulating DA services.

The parties also agree that the dialing parity requirements of the Federal Telecommunications Act of 1996 do not apply to 411 DA. The service is simply a part of the overall package of local services a customer selects when they choose their local exchange carrier. The Board agrees.

The parties disagree regarding the question of whether the Board deregulated local DA in Docket No. INU-95-3. It does not appear the Board considered deregulation of local services, DA to other carriers, or access services in that docket, which was primarily (if not entirely) concerned with intraLATA retail services. Thus, that docket provides no basis to conclude that the competition for retail services in the intraLATA marketplace is effective in the local exchange market, as well. The Board will not approve deregulation of an important service

like local directory assistance on the basis of an unclear record. If U S West believes these local services are subject to effective competition and should be deregulated, then U S West should file a petition with the Board to initiate an appropriate proceeding to make that determination.

The same analysis applies to local operator services. By definition, these services were not a part of Docket No. INU-95-3. A separate investigation should be initiated to support deregulation of these services, if it is to be done at all.

Accordingly, the Board will reject U S West's proposed tariff revisions removing local DA and operator services. The Board will also direct U S West to modify and re-file certain pages as necessary to accommodate the rejection of the proposed revisions and to restore references to services that are not being removed from the tariff. Finally, U S West will be directed to revise certain tariff pages to permit the elimination of Iowa Tariff No. 1, Section 6, relating to MTS services.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. U S West's proposed tariff revisions removing local DA and operator services, filed with the Board on April 12, 1999, as a part of TF-99-109 are rejected.

The specific pages are as follows:

Iowa Tariff No. 1, Section 1, pages 5, 6, 15.1, 18, 20, 21, and 22;
Iowa Tariff No. 1, Section 5, index pages 1 and 2;
Iowa Tariff No. 1, Section 5, pages 118 and 121;

Iowa Tariff No. 1, Section 17, index page 1; and
Iowa Tariff No. 4, all proposed revised pages.

2. U S West is directed to modify and re-file the following tariff pages to accommodate the rejection of the proposed revisions identified above and to restore references to services that are not being removed from the tariff:

Iowa Tariff No. 1, Section 1, pages 6, 20, and 22 and
Iowa Tariff No. 1, Section 5, page 30.

The revised tariff index pages should be filed on or before September 19, 1999.

3. U S West is directed to revise and re-file the following tariff pages in the manner described to permit the elimination of Iowa Tariff No. 1, Section 6, relating to MTS services:

- a. Remove "National Directory Assistance" from Iowa Tariff No. 1, Section 6.2.4.B, First Revised Page 3.
- b. Re-locate Line Status and Busy Verification Service from Section 6.2.8 to the Operator Services section of the tariff.
- c. Re-write local DA, Section 6.2.4, to clarify the scope of the service (distinguishing it from National DA, above), add a description of the dialing methods available to access the service, and move it to the Operator Services section of the tariff.

The revised tariff pages should be filed on or before September 19, 1999.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr. /s/ Diane Munns
Executive Secretary

Dated at Des Moines, Iowa, this 27th day of August, 1999.